Filed 1/5/16 LaChapelle v. Hansen McCoy Investments CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

FRANK LACHAPELLE, Plaintiff, Cross-defendant and Respondent, v. HANSEN MCCOY INVESTMENTS, LLC, Defendant, Cross-complainant and Appellant.	E060825 (Super.Ct.No. INC1101291) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING [NO CHANGE IN JUDGMENT]

The petition for rehearing is denied. The opinion filed in this matter on December 7, 2015, is modified as follows:

The first sentence of paragraph two on page 26 is modified to delete the words "Finally, appellant contends" and substitute instead the words "Appellant also contends".

On page 27, before the Disposition, insert:

Finally, appellant filed a petition for rehearing contending this opinion creates a split in authority with two other districts by deciding Wells Fargo and RSC were not indispensable parties to LaChapelle's lawsuit. According to appellant, LaChapelle sued "to cancel the Wells Fargo deed of trust, set aside the . . . trustee's sale by RSC and cancel the ensuing Trustee's Deed from RSC to Hansen McCoy." Appellant cites *Straube v. Security First Nat'l Bank* (1962) 205 Cal.App.2d 352 (*Straube*) for the proposition that the beneficiary of a trust deed is an indispensable party in a suit to quiet title brought by the trustor against the trustee and concludes Wells Fargo, as the beneficiary, was an indispensable party to the action to cancel the Wells Fargo deed of trust. It cites *Washington Mutual Bank v. Blechman* (2007) 157 Cal.App.4th 662 (*Washington Mutual*) for the proposition that the seller and trustee are indispensable parties in a suit to set aside a trustee's sale and concludes Wells Fargo and RSC, as seller and trustee, were indispensable parties to the action to set aside the trustee's sale.

Appellant did not raise either *Straube* or *Washington Mutual* in its briefing and mentioned only the *Straube* decision at oral argument. Ordinarily, we do not address arguments not raised in the parties' opening briefs. We make an exception in this case to point out that each new argument relies on a false premise. LaChapelle did not pursue a claim to cancel the Wells Fargo deed of trust and did not sue to set aside the trustee's sale. As a result, the holdings of *Straube* and *Washington Mutual* are inapplicable to this case. LaChapelle could have pursued his original claim to cancel Wells Fargo's deed of

trust and could have brought a cause of action to set aside the trustee's sale under the foreclosure statute. (See *Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830-831.) Arguably, he would have been well-advised to do so. But appellant has provided no reason to conclude LaChapelle was *required* to pursue those causes of action in order to prevail in a quiet title suit against appellant and its lender.

The rationale for concluding the seller was an indispensable party in *Washington Mutual* does not support holding Wells Fargo and RSC were indispensable parties in this quiet title case. Their presence in the lawsuit was not required for complete relief and their absence does not "'leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.'" (*Washington Mutual*, *supra*, 157 Cal.App.4th at p. 668 [quoting Code Civ. Proc., § 389, subd. (a)(2)(ii)].) In *Washington Mutual*, the trial court set aside the foreclosure sale and held the foreclosure buyer could seek to recover his purchase money from the nonparty seller-lender. (*Id.* at p. 666.) Here, the trial court, acting in equity, quieted title in respondent and also ordered respondent to pay Hansen McCoy its purchase price plus the cost of improvements and maintenance to the property. (See *Vanderkous v. Conley* (2010) 188 Cal.App.4th 111, 119 ["the court's equity jurisdiction in a quiet title action" gives it "'jurisdiction to hear and determine all issues necessary to do complete justice'"]; see also Code Civ. Proc., § 760.040, subd. (c) ["Nothing in this chapter" governing quiet title actions "limits any authority the court may have to grant

such equitable relief as may be proper under the circumstances of the case"].) In addition, Wells Fargo has obtained payment for its interest in the property.

Other than this modification, the opinion remains unchanged. This modification does not change the judgment.

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RAMIREZ
P. J.

We concur:

KING
J.

CODRINGTON
J.

Filed 12/7/15 LaChapelle v. Hansen McCoy Investments CA4/2 (unmodified version)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

FRANK LACHAPELLE, Plaintiff, Cross-defendant and Respondent, v. HANSEN MCCOY INVESTMENTS, LLC, Defendant, Cross-complainant and Appellant.	E060825 (Super.Ct.No. INC1101291) OPINION

APPEAL from the Superior Court of Riverside County. Elisabeth Sichel, Judge. Affirmed.

Michael V. Hesse, a Professional Corporation and Michael V. Hesse for Defendant, Cross-complainant and Appellant.

John C. Torjesen & Associates and John C. Torjesen for Plaintiff, Cross-defendant and Respondent.

Plaintiff and respondent, Frank LaChapelle, sought to quiet title to his former home as against defendant and appellant, Hansen McCoy Investments, LLC, which purchased the property at a foreclosure sale, and defendants Samir Yousif and Karen Doyle, who financed the purchase. (Code of Civ. Proc., § 760.010 et seq.) LaChapelle also sought to cancel Hansen McCoy's trustee's deed and the deed of trust belonging to Yousif and Doyle. (Civ. Code, § 3412 et seq.) The trial court held a bench trial and, after finding the deed of trust that supplied the authority for the foreclosure sale was void because it was obtained by fraud in the execution, ordered title quieted in favor of LaChapelle and cancelled the deed of trust on the property. The court also exercised its equitable powers to order LaChapelle to pay Hansen McCoy an amount equal to the sum of the purchase price and the expenditures appellant made to preserve the property.

Hansen McCoy appeals and contends the trial court committed reversible error by rendering judgment in favor of LaChapelle despite the fact that: (1) he failed to sue and prevail in a separate cause of action against prior interest holders for cancellation of the fraudulently obtained mortgage and deed of trust; (2) he failed to join necessary parties; and (3) his judgment against appellant made it liable for the torts of other nonparties. Neither party appeals the equitable award to Hansen McCoy. For the reasons explained *post*, we affirm the judgment.

I

FACTUAL BACKGROUND

In 1998, Frank LaChapelle purchased a house located at 264 Loch Lomond Road in Rancho Mirage, California, where he and his wife lived in retirement. In 2007, LaChapelle refinanced his debt by taking out a $675,000 adjustable rate mortgage with Bank of America which carried a five-year fixed 6 percent annual interest rate.

In early 2008, Natalie Apikian[1] of First Financial Lending Group (First Financial) approached LaChapelle about refinancing. According to LaChapelle, Apikian "called one day and said that they knew that I had a loan at B[ank] of A[merica] of 6%, and she'd like to give me a 4% loan." LaChapelle talked with Apikian and her manager, Sevan Ranjbar, intermittently over two months. First Financial also sent a Truth in Lending Statement and a Good Faith Estimate worksheet setting out the terms of the adjustable rate loan, including the $737,000 loan amount and the 4 percent annual interest rate fixed for five years. Based on First Financial's representations, LaChapelle decided to go forward with the loan.

On March 19, 2008, LaChapelle and his wife went to the First Financial office to sign the loan documents. Apikian, Ranjbar, and James Garcia met with them and reviewed the loan terms. LaChapelle testified "we spent probably an hour going over, okay, now, this is a $737,000 loan; right? I pay 4%, which is, as I recall, $2,456 per month. I pay 60 payments of $2,456 if I choose to, and then I still owe you

[1] Natalie Apikian's last name is spelled both "Apikian" and "Apickian" in the record on appeal.

$737,000. . . ." LaChapelle testified that "I calculated it. I figured it all out. I looked it over, everything. Everybody agreed. So I said, okay, we'll sign the papers." LaChapelle said he "read every paper that I signed, and I showed it to my wife. And when we came across the note, the note said 4%, et cetera, et cetera, payments of so and so and five years. . . . The *Good Faith and Lending Statement*, the *Truth in Lending Statement*, I signed that also, and I showed it to [my wife]. I noticed in there that there were rescission documents, cancellation documents." LaChapelle introduced as exhibits the Truth in Lending Statement and Good Faith Estimate which confirm the terms and payments were to be as LaChapelle testified.

After reviewing and signing all the loan documents, LaChapelle requested a copy. The representatives of First Financial said, "Well, our copier broke so we can't make you a copy." LaChapelle tried to convince them to find another copier and they "argued about that for ten minutes." He testified that "all of a sudden I'm talking to Sevan Ranjbar and . . . the papers disappeared. James Garcia, the notary, picks up the papers and goes in the back." The LaChapelles left without copies of their new loan documents. However, First Financial "absolutely promised that they would copy [the documents] that afternoon and FedEx them to our house" so they would "have them tomorrow."

The documents did not arrive the next day and LaChapelle began pursuing the broker, at first attempting to get copies of the documents and then trying to rescind the agreement within the cancellation period. LaChapelle called First Financial on Thursday, March 20, and Nancy Apikian assured him the documents had been sent and would come later in the day. They did not arrive. He called Friday and told Sevan Ranjbar he wanted

to cancel the loan. Ranjbar promised to get the documents to him by messenger service that day. LaChapelle received a package of loan documents at 6:49 p.m. on Friday, but the documents were not the ones he had signed. LaChapelle testified, "My signature was absolutely nowhere. And at the bottom of every page it said Wachovia, and it said seven—I believe that it was 7.8%, three-year loan. And there were no rescission documents in there."[2]

LaChapelle introduced the putative loan agreement, entitled the "Adjustable Rate Mortgage Note—3 Year Fixed Rate Pick-A-Payment Loan." It sets out a loan for $737,000 with a three year fixed annual interest rate of 7.4%. After the first three years, the interest rate could increase up to 11.950%. The first five pages of the agreement have the same footer date (2007-04-4) and footer title ("ADJUSTABLE PICK-A-PAYMENT NOTE – 3 YEAR FIXED"). Each of those pages also has a footer serial number that indicates their sequence (SD260A, SD260B, SD260C, SD260D, and SD260E). The last page of the agreement consists of a standalone signature page with Mr. LaChapelle's signature. That page has different information in its footer; it omits the title, has a different date (2004-03-1), and the serial number does not continue the sequence (SD260).

[2] Wells Fargo produced a file related to the LaChapelles which contained two sets of loan documents, one related to the loan for 4% and another for the loan for 7.4%. Each set of documents contained putative signatures of LaChapelle. LaChapelle denied signing the documents for the 7.4% loan and testified they were forgeries.

When LaChapelle received these documents, he called Ranjbar and demanded that Ranjbar send him a copy of the Truth in Lending Statement, which he had signed when executing the loan documents. Ranjbar emailed him an electronic copy on Saturday and it showed the terms to which LaChapelle said the parties had agreed. LaChapelle "told Sevan Ranjbar absolutely I wanted to cancel the loan."

LaChapelle also began trying to cancel the loan by contacting Wachovia and Bank of America. He testified, "On Saturday we called the fraud department of Wachovia . . . and told them we want to cancel this loan." A Wachovia representative said he "can't cancel it if I don't have a loan number." LaChapelle also "called Bank of America fraud department and said don't unfund this loan. If you should get funds from Wachovia, you are to refuse them." But the Bank of America representative "said they probably couldn't do that" and "suggested that we go back to the broker and cancel the loan."

Monday morning, LaChapelle and his wife returned to First Financial and told them he wanted to cancel the loan. After resisting, James Garcia said, "Well, okay. I'll go talk to Wachovia." But when he returned fifteen minutes later, Garcia "said it's too late. It's already been funded." LaChapelle did not know this at the time, but the loan did not in fact close until the following Friday. The LaChapelles left without obtaining a solution and called the California Secretary of State's Office for advice. A staff member recommended they "go back to the broker . . . and insist that they talk to Wachovia again with you."

The LaChapelles returned to the First Financial offices the next day. There, they learned that Ranjbar had "been taken off the case" and met instead with "Marc Hanna, who is Sevan Ranjbar's boss." They told Hanna that they "wanted to talk to Wachovia," but Hanna said "James Garcia isn't there so we can't call Wachovia. And he insisted [the loan has] been funded, and there's really nothing we can do." However, Hanna assured LaChapelle "he would work with Wachovia and they would work this out and he's sure Wachovia made a mistake. It was just a mistake and it can be rectified and bear with them."

LaChapelle testified they had "continuous phone calls" with Marc Hanna over "the next probably three weeks, maybe even a month." Hanna said he was "talking to Wachovia" and "[g]oes on and on and on about all the stuff he's doing, and at one time he even said, Well, they offered me—they could do a 6.4% loan right now or you can make payments for two months, and then they could do a 6.3%, all kinds of possible deals." However, no solution materialized, and when LaChapelle asked for the name of a person to talk to at Wachovia, Hanna said, "Well, we can't both talk to them so I'm talking to them on your behalf. Let me talk to them. Let me try to fix this." LaChapelle persisted, however, and Hanna gave him the name of Jim Biasioli. But when LaChapelle contacted Biasioli, Biasioli said he had never spoken with Marc Hanna and denied Wachovia had offered a 6.4% or 6.3% loan to replace the 7.4% loan.

From that point on, LaChapelle worked with Biasioli rather than personnel at First Financial. LaChapelle "told Jim Biasioli [he] wanted to cancel the loan," but "[h]e told me it was impossible to cancel it." LaChapelle told Biasioli "what [he] really want[s] is

[his] 4% loan," but Biasioli told him Wachovia did not "have any 4% loans." Together, they "put together a four-page letter detailing what happened with First Financial and how the documents were switched," which they sent to Wachovia's fraud department on May 20, 2008. LaChapelle never received a response.

At that point, LaChapelle threatened to stop paying the loan, and Biasioli convinced him to consider modifying the loan to a 6.8% interest rate "as a stepping stone to get" the interest rate down to what it should be. Biasioli presented LaChapelle with a Modification Agreement with a 6.75% annual interest rate. According to LaChapelle, "He described it as the best that he could do at that moment but that he would continue to work on it and that . . . they were coming up with new lower-interest loans and that I would qualify for one of those." Based on those representations, LaChapelle signed the Modification Agreement on June 23, 2008.

LaChapelle continued working with Wachovia's loan department to try to qualify for a loan with a lower interest rate. In or around October 2008, Wachovia failed, Wells Fargo acquired its assets, and LaChapelle continued these discussions with Wells Fargo. In October 2009, unable to get a lower interest rate, LaChapelle stopped making payments on the mortgage. LaChapelle reinstated the loan on July 20, 2010 and resumed working with Wells Fargo to get LaChapelle a new loan with a better interest rate. Again, those efforts failed.

By November 2010, LaChapelle had concluded he would not receive a new loan with a lower interest rate and retained an attorney. On December 1, 2010, LaChapelle stopped making payments on the mortgage. On February 14, 2011, LaChapelle filed a

complaint in the Riverside County Superior Court against Wells Fargo, First Financial, and other unknown parties. LaChapelle's complaint contained six counts: (1) fraud, deceit and misrepresentation; (2) intentional infliction of emotional distress; (3) wrongful foreclosure; (4) negligence with willful misconduct; (5) cancellation of instruments; and (6) quiet title on the Loch Lomond property. On February 15, 2011, LaChapelle recorded a Notice of Pendency of Action (lis pendens), informing potential purchasers that the property was the subject of ongoing litigation.

On March 13, 2012, Regional Services Corporation ("RSC"), serving as trustee for Wells Fargo, recorded a Notice of Trustee's Sale. The Notice announced: "On April 3, 2012 . . . REGIONAL SERVICE CORPORATION . . . as duly appointed Trustee under that certain Deed of Trust executed by FRANK J. LA CHAPELLE . . . WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER . . . without warranty express or implied as to title, use, possession or encumbrances, all right, title and interest conveyed to and now held by it as such Trustee."

Kris Hansen appeared at the auction on behalf of Hansen McCoy. Hansen McCoy consists of two partners, Kris Hansen and Kreg McCoy, who are in the business of buying and selling distressed real estate. According to Hansen, they "acquire properties at trustee's sales, short sales, . . . bank owned properties . . . [s]ometimes even standard sales . . . if it needs enough work that we can . . . put enough into it to get it back out of it." Hansen said they "[b]uy [the properties], rehab them, and sell them." Kris Hansen found out about the sale of the Loch Lomond property using a website called Foreclosure Radar on the day of the sale. Hansen attended the auction and entered the winning bid of

$552,000 on a property he estimated to be worth $900,000 to $950,000 at the time of trial. Hansen McCoy bought the property with financing from defendants Samir Yousif and Karen Doyle.

Hansen McCoy bought the property with notice that the property was subject to a lawsuit. Hansen had not been to the property and did not know it was occupied when he attended the sale. However, he consulted with a title company before the auction, which informed Hansen that "there was a possible lis pendens," though it "didn't have the time to actually do the research on it to figure out what it was." Hansen admitted he knew there was a risk that he would buy the property and the litigation could be "to protect serious rights." After Hansen McCoy purchased the property, Hansen and McCoy visited it together and discovered it was still occupied. LaChapelle informed them that "[t]here's a lawsuit on this property" and advised them to "go back and get your money right now." Hansen later asked the title company "to look into [the lis pendens] further." Approximately a week after the sale, the title company told Hansen the lis pendens related to "an ongoing lawsuit with . . . Wells Fargo or Wachovia" and "it had been going on for five years or four years" and that the title company "couldn't just pull [the lis pendens] off."

After the sale, in April and May 2012, LaChapelle named Hansen McCoy, Samir Yousif and Karen Doyle as defendants and obtained dismissal without prejudice on May 22, 2012 of his claims against Wells Fargo after it objected it no longer had an interest in the property. The new defendants demurred, claiming, among other things, that the

complaint did not state facts related to their conduct. The trial court sustained the demurrer with leave to amend.

On September 17, 2012, LaChapelle filed an amended complaint alleging: (1) fraud, deceit and misrepresentation against First Financial and unknown individuals; (2) breach of fiduciary duty against First Financial and unknown individuals; (3) negligence with willful misconduct against First Financial and unknown individuals; (4) cancellation of instruments against Hansen McCoy, Samir Yousif, Karen Doyle, First Financial, and unknown individuals; and (5) quiet title against Hansen McCoy, Samir Yousif, Karen Doyle, First Financial, and unknown individuals. The trial court overruled a demurrer filed by Hansen McCoy, Yousif, and Doyle, holding "Plaintiff has alleged a factual basis for cancellation of instrument and quiet title against these defendants. The issue is whether the alleged fraud and negligence of other defendants renders the title acquired by the demurring defendants void." On January 30, 2013, the trial court dismissed First Financial after service had failed.

Meanwhile, the LaChapelles refused to vacate the property, and Hansen McCoy sought to evict them. Hansen McCoy obtained an unlawful detainer judgment on August 20, 2012 and obtained possession of the property on September 6, 2012. Thereafter, Hansen McCoy spent $235,984.39 on the property, including expenses directly related to the upkeep of the house, such as repairs, maintenance, loan payments, property taxes, security, and insurance as well as other costs, such as legal fees, and costs to stage the house as a rental. The legal fees include fees Hansen McCoy paid to evict the LaChapelles and to contest this lawsuit.

The trial court heard the foregoing evidence at a bench trial on November 27 and December 2, 2013. The court issued a written ruling on December 16, 2013. The court credited the testimony of the LaChapelles and found that: (1) "First Financial represented that the loan would be at 4%, interest only for five years, secured by a new first trust deed;" (2) "First Financial . . . knew that the representation was not true;" (3) "First Financial . . . made the representations to induce the plaintiff to sign loan documents that would later be reassembled into a different loan application;" (4) "Plaintiff reasonably relied on these representations;" and (5) "[P]laintiff would not have signed the loan documents if he had known the representation was not true." Based on those findings, the court held that the contract was "made by falsifying documents," and was therefore void *ab initio*.

The court also determined that Wachovia, Wells Fargo, and Hansen McCoy could not assert rights to the property superior to LaChapelle's. The court held the fraud gave LaChapelle a defense to any action on a negotiable instrument brought by a holder in due course. In addition, the court held Wachovia was not a holder in due course because it gained actual notice of the fraud when LaChapelle notified it before the loan had closed and recorded. Wells Fargo was not a holder in due course because it obtained the note in a bulk purchase of Wachovia's business. Hansen McCoy, meanwhile, was not a holder in due course because it "took with both actual and constructive knowledge of the Lis Pendens" and defendants are not "good faith improvers entitled to relief under CCP § 871.1 et seq."

Accordingly, the court ruled in favor of LaChapelle "against Hansen & McCoy, Yousif and Doyle to cancel the existing trust deed to secure the loan made by Yousif and Doyle" and granted LaChapelle "fee simple title to the property."

The court found, however, that it was not equitable for "the plaintiff [to] end up with his property free and clear of all deeds of trust" because if he had gotten the promised loan, "he would owe $717,737.00 for the loan payoff." Meanwhile, Hansen McCoy purchased the property for $552,000 and "put additional monies into the property." Of the expenses Hansen McCoy claimed, the court considered reimbursement of $74,273 appropriate "because [the funds] went to the preservation of the property and inure to the Plaintiff's benefit."

LaChapelle filed a proposed judgment setting out the trial court's order. Hansen McCoy filed objections to the proposed judgment, raising, among other things, the issues it now raises on appeal. The trial court held a hearing on defendant's objections on March 7, 2014 and overruled those objections. The trial court then entered final judgment "grant[ing] to Plaintiff Frank LaChapelle fee simple title to property at 264 Loch Lomond," "cancel[ling] the Short Form Deed of Trust and assignment of rents dated April 18 . . . that was made by defendant Hansen McCoy Investments for defendants Samir Yousif and Karen Doyle respecting the property in this case," and

ordered LaChapelle to pay Hansen McCoy $596,273.[3] Hansen McCoy appeals this judgment.

II

DISCUSSION

Appellant does not contend on appeal that the trial court's finding of fraud in the execution of LaChapelle's mortgage contract was based on insufficient evidence. Nor does it contend the court erred in holding that the fraud rendered the mortgage contract and deed of trust void and deprived their interests in the property of legal foundation.

Instead, appellant contends LaChapelle's quiet title and cancellation claims are defective because he did not pursue claims against First Financial, Wells Fargo, and RSC, and argues the trial court erred by ruling in favor of LaChapelle despite these defects. "We review any pure issues of law de novo." (*VL Systems, Inc. v. Unisen, Inc.* (2007) 152 Cal.App.4th 708, 712.) In this case, such issues include (1) whether prevailing in a cause of action against First Financial or Wells Fargo to cancel the original deed of trust was a prerequisite to prevailing against appellant to cancel deeds and quiet title, (2) whether Wells Fargo and RSC were necessary parties to the action against appellant, and (3) whether the court impermissibly held appellant responsible for the tortious

[3] The final judgment awarded $30,000 less than the December 16, 2013 order indicated. The discrepancy is not explained in the record. We note that LaChapelle submitted a proposed final judgment awarding Hansen McCoy $596,273—the lesser amount. Appellant did not object to the award on the basis that it was inconsistent with the trial court's order and does not contest the amount of the award on appeal.

conduct of First Financial. "Any pertinent factual determinations made by the trial court are reviewed for substantial evidence." (*Ibid*.)

A. *LaChapelle Proved the Hansen McCoy Trustee's Deed and Yousif's and Doyle's Deed of Trust Are Void.*

Appellant contends the trial court erred by failing to require LaChapelle to "plead and prove allegations of fraud to be entitled to cancellation of the instrument under attack" because title may "be quieted only if the instrument is cancelled, pursuant to such fraud." According to appellant, "[w]ithout causes of action for fraud, breach of fiduciary duty or negligence, plaintiff had no basis for cancellation of the Wachovia Mortgage trust deed and, consequently, no basis for quiet title as to the trust deed." We disagree with appellant's characterization of the claims, the evidence, and the law. LaChapelle proved fraud in the execution of the original mortgage contract and deed of trust. That defect tainted appellant's trustee's deed and the deed of trust held by Yousif and Doyle, and entitled LaChapelle to have those deeds cancelled and to quiet title in his favor.

At the outset, it is important to keep in mind the legal instruments that are at issue in this appeal as well as the parties who hold or did hold them. LaChapelle took out a mortgage on his home from Wachovia, with First Financial acting as broker. After the completion of the mortgage transaction, LaChapelle held title to the property, and Wachovia held a deed of trust. Wachovia subsequently failed, and Wells Fargo acquired the deed of trust as part of a bulk asset acquisition. At the time of LaChapelle's original complaint, then, he held title, and Wells Fargo held a deed of trust. Appellant repeatedly asserts LaChapelle's claims target this Wells Fargo deed of trust. That is misleading.

The operative complaint is the Fifth Amended Complaint, which states cancellation and quiet title causes of action against Hansen McCoy, Yousif, and Doyle, not Wells Fargo, and alleges all deeds on the property acquired after the Wells Fargo deed of trust are void and subject to cancellation due to the fraud committed by First Financial.

In December 2010, LaChapelle stopped making payments to Wells Fargo on the mortgage. Wells Fargo and its trustee RSC pursued a nonjudicial foreclosure under the authority of the deed of trust. On April 3, 2012, they sold the Loch Lomond property to Hansen McCoy at a public auction. At that point, Hansen McCoy acquired a trustee's deed to the property, and Yousif and Doyle obtained a deed of trust.

LaChapelle sued to quiet title against Hansen McCoy, Yousif, and Doyle and to cancel Hansen McCoy's trustee's deed and Yousif's and Doyle's deed of trust on the grounds that Wells Fargo and RSC pursued foreclosure under a deed of trust that was void due to fraud in the execution. A quiet title plaintiff can prove ownership against adverse claims to real property by establishing his own claim to title and establishing that claims adverse to his claim are wrongful. (Code Civ. Proc., § 761.020, subds. (a)-(c); *Lucas v. Sweet* (1956) 47 Cal.2d 20, 22.) To quiet title on the ground that the adverse claim traces to fraud, the plaintiff must show the adverse claim derives from a misrepresentation made with knowledge of its falsity and the intent to induce reliance on which the defrauded party justifiably relied to his detriment. (See *Burris v. Adams* (1892) 96 Cal. 664, 667-668; see also *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255 [setting out elements of fraud].) Similarly, a plaintiff may obtain

cancellation of a trustee's deed or deed of trust based on proof that the instrument was obtained by fraud. (See *Smith v. Williams* (1961) 55 Cal.2d 617, 619-620.)

A mortgage contract and deed of trust obtained by fraud in the execution are void. Fraud in the execution occurs where one party induces the other to sign a contract that is of a different character than it is represented to be. (*C.I.T. Corp. v. Panac* (1944) 25 Cal.2d 547, 549 (*C.I.T.*).) "'[W]here there is fraud in the factum, as where the grantor intends to execute one instrument but another is surreptitiously substituted in its place and the grantor is fraudulently made to sign, seal and deliver an instrument different from that intended, it would seem that such a fraud in the factum renders the deed not merely voidable but absolutely void.'" (*Erickson v. Bohne* (1955) 130 Cal.App.2d 553, 556 (*Erickson*), quoting 26 Corpus Juris Secundum, pp. 307-308.) "'[W]here without negligence chargeable to the grantor there is no effective delivery because of fraud . . . the deed will be held void.'" (*Erickson*, at pp. 556-557; see also *C.I.T.*, *supra*, at p. 549 [holding if grantor "attaches his signature to a paper assuming it to be a paper of a different character, *the paper is void*"].)

The conclusion that a putative mortgage contract and deed of trust are void has important consequences. First, "a good faith purchaser may acquire good title to property if he takes it from one who obtained voidable title by misrepresentation but not if he takes it from one who obtained 'void title' by misrepresentation." (Rest.2d Contracts, § 163, com. c.) "[T]he overwhelming weight of authority [holds] a negotiable instrument which is void . . . where there is in fact no contract or there is fraud in the execution, is not enforceable by a holder in due course in the absence of negligence on the part of the

maker." (*C.I.T., supra,* 25 Cal.2d at p. 550.) As a result, where a deed of trust is void, "all proceedings under the deed of trust would likewise be wholly ineffective and void." (*Saterstrom v. Glick Bros. Sash, Door & Mill Co.* (1931) 118 Cal.App. 379, 383.) "'A void deed passes no title and cannot be made the foundation of a good title even under the equitable doctrine of bona fide purchase.'" (*Erickson, supra,* 130 Cal.App.2d at p. 557, quoting 26 Corpus Juris Secundum, pp. 307-308; see also *Wutzke v. Bill Reid Painting Service, Inc.* (1984) 151 Cal.App.3d 36, 44 [recognizing the "elementary legal principle" that any claim of title flowing from a void trust deed is also void].)

LaChapelle successfully proved the Wachovia mortgage contract and deed of trust were procured by fraud in the execution. Much of the trial record consists of testimony and documentary evidence tending to prove First Financial and its agents perpetuated a document switch fraud on LaChapelle. For example, LaChapelle testified he and three representatives of First Financial spent an hour going over the terms of the loan. He confirmed that the loan amount was $737,000 with a 4 percent interest-only interest rate for five years. LaChapelle testified he "read every paper that I signed, and I showed it to my wife. And when we came across the note, the note said 4% . . . [for] five years." The Truth in Lending Statement and Good Faith Estimate, which he also signed, confirm the terms and payments were to be as LaChapelle testified. However, when First Financial, after much delay, sent a copy of the loan documents to LaChapelle, they set out a loan for $737,000 with a three-year fixed annual interest rate of 7.4 percent, which could increase up to 11.950 percent. Moreover, the first five pages of the putative loan agreement had different footer information than the last page—a standalone page displaying

LaChapelle's signature. The trial court credited LaChapelle's testimony and found that First Financial had attached LaChapelle's signature page to a different agreement than the one LaChapelle had accepted.

Based on that and additional evidence, the trial court held the plaintiff proved by a preponderance of the evidence that "First Financial represented that the loan would be at 4%, interest only for five years, secured by a new first trust deed. [¶] That First Financial or its representative knew that the representation was not true. [¶] That First Financial or its representative made the representations to induce the plaintiff to sign loan documents that would later be reassembled into a different loan application. [¶] That the Plaintiff reasonably relied on these representations. [¶] That the plaintiff would not have signed loan documents if he had known the representation was not true." Appellant does not challenge the sufficiency of the evidence supporting these findings on appeal. In any event, they are supported by substantial evidence. (See *Gardner v. Rubin* (1957) 149 Cal.App.2d 368, 372.)

Based on those findings, the trial court concluded the mortgage agreement was void *ab initio*, meaning "there never was a contract because there was no meeting of the minds of the parties to the contract." Appellant does not challenge this holding on appeal. Because the trial court found based on substantial evidence that LaChapelle acted reasonably in relying on First Financial's representations, there was no negligence, and no holder in due course could have an enforceable interest in the property. Thus, the deed of trust held by Wachovia was void, the deed of trust Wells Fargo obtained in Wachovia's asset sale was void, and the deed appellant obtained at the foreclosure sale of

the Loch Lomond property was void. (See *Saterstrom v. Glick Bros. Sash, Door & Mill Co.*, *supra*, 118 Cal.App. at p. 383.) The trial court correctly recognized these consequences, and appellant does not challenge those aspects of the ruling on appeal.

As an alternative basis for the same result, the trial court found "Wachovia had actual notice of the fraud," Wells Fargo was a "bulk transferee," and Hansen McCoy had "actual and constructive knowledge of the Lis Pendens . . . [and] took the property subject to the claims of the lawsuit," and correctly concluded none of them could be holders in due course. Appellant does not challenge those holdings on appeal.

Having discussed the factual and legal basis for the judgment, we turn to appellant's contentions on appeal.

B. *The Trial Court Correctly Concluded LaChapelle Could Bring Quiet Title and Cancellation Claims Against Appellant.*

Appellant relies principally on *Leeper v. Beltrami* (1959) 53 Cal.2d 195 (*Leeper*) and *Deutsche Bank National Trust Co. v. McGurk* (2012) 206 Cal.App.4th 201 (*Deutsche Bank*) to contend that LaChapelle's right to cancel instruments or quiet title against them depends on his prevailing in a separate cause of action to cancel the Wells Fargo trust deed. Since LaChapelle voluntarily dismissed its causes of action against Wells Fargo, they argue, these cases establish that the court erred by quieting title in favor of LaChapelle. We have reviewed these cases carefully and find in them no support for appellant's conclusion.

Appellant's argument depends on ignoring the nature and timing of LaChapelle's cancellation and quiet title causes of action. He filed the claims against appellant after it

acquired an interest in the property in a foreclosure sale. The foreclosure sale satisfied the deed of trust then held by Wells Fargo, extinguishing any claim or interest Wells Fargo had in the property, and terminated the mortgage agreement LaChapelle later proved was procured by fraud. (Civ. Code, § 2910 ["The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, . . . extinguishes the lien thereon"]; *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1235 ["A security interest cannot exist without an underlying obligation, and therefore a mortgage or deed of trust is generally extinguished by either payment or sale of the property in an amount which satisfies the lien"].) Instead of continuing to pursue Wells Fargo, LaChapelle elected to sue the foreclosure purchasers directly, which required him to prove the mortgage and deed of trust were procured by a fraud and establish the fraud had the legal effect of rendering the interests of Hansen McCoy, Yousif, and Doyle void as well. As we discussed *ante*, LaChapelle did so successfully.

LaChapelle could have maintained his suit against Wells Fargo despite the sale. If he had succeeded in quieting title against Wells Fargo, the judgment would have been binding against Hansen McCoy because LaChapelle had recorded a lis pendens and Hansen McCoy purchased the property with notice of the fraud. (*Bishop Creek Lodge v. Scira* (1996) 46 Cal.App.4th 1721, 1734 [Fourth Dist., Div. Two] ["The purpose of a lis pendens is to give constructive notice of an action affecting real property to persons who subsequently acquire an interest in that property, so that the judgment in the action will be binding on such persons even if they acquire their interest before the judgment is actually rendered"].) Appellant contends LaChapelle was required to continue its lawsuit

against Wells Fargo rather than pursue Hansen McCoy directly, but it has provided no authority to support that conclusion.

The Supreme Court's decision in *Leeper* does not supply such authority. In *Leeper*, the court was faced with determining which statute of limitations applies to an action with two counts against a single defendant, one to cancel a contract for the sale of land based on duress and another to quiet title. (*Leeper, supra*, 53 Cal.2d at pp. 211-216) The high court held that in determining whether to quiet title "where a contract exists between the parties, the court must first find something wrong with that contract. In other words, in such a case, the plaintiff must show he has a substantive right to relief before he can be granted any relief at all." (*Id.* at p. 216.) Based on this fact, the court concluded the five-year statute of limitations for bringing an action to recover real property did not apply and plaintiffs' claims were time barred. This case is different. First, no contract existed between LaChapelle and Hansen McCoy. Appellant was a downstream purchaser of the property at a sale conducted under the authority of a void deed of trust. LaChapelle entered the contract that was tainted by fraud with a dissolved bank, and the resultant void deed of trust had been transferred to Wells Fargo and subsequently extinguished by the sale to appellant. More important, LaChapelle *did* prove by a preponderance of the evidence that he had a substantive right to relief against the original contract and deed of sale. He proved his underlying substantive right at trial against appellant rather than Wells Fargo and over appellant's active opposition to his claims. That proof established his right to quiet title against appellant. Nothing in

Leeper indicates he was required to establish his substantive right in an action against Wells Fargo instead.

The *Deutsche Bank* decision is similarly inapposite. In that case, the issue was "the effect of a quiet title judgment on the assignee of the interest of an entity whose interest *was not litigated* in the quiet title action." (*Deutsche Bank*, *supra*, 206 Cal.App.4th at p. 204.) The plaintiff homeowner brought a quiet title action against several defendants who had fraudulently induced her to transfer her property and encumber it with a burdensome mortgage from New Century Mortgage Corporation. (*Id.* at p. 205.) While the lawsuit was pending, New Century assigned its deed of trust on the property to Deutsche Bank. (*Id.* at p. 206.) New Century also entered bankruptcy and obtained an automatic stay of the homeowner's claims against it. (*Ibid.*) Rather than contest the automatic stay, the homeowner elected to dismiss New Century and pursue her claims against the mortgage company in the bankruptcy proceedings. (*Id*. at p. 207.) Meanwhile, she obtained a judgment against the remaining defendants quieting title in her favor. (*Id.* at pp. 207-208.) Deutsche Bank subsequently sued the homeowner for a declaration "that its deed of trust was valid; or, in the alternative, a declaration that it had a valid equitable claim to the extent the loan proceeds had paid off [the homeowner's] original mortgage." (*Id*. at p. 208) The homeowner argued the prior quiet title judgment was binding on Deutsche Bank, but the Court of Appeal concluded "the judgment did not impact New Century's interest, and therefore could not impact Deutsche Bank's interest either." (*Id.* at p. 217.)

Unlike *Deutsche Bank*, this case does not involve an attempt to enforce a prior judgment against appellant. To the contrary, when appellant purchased the Loch Lomond property, LaChapelle sued it directly. Nothing in the *Deutsche Bank* decision suggests LaChapelle was not permitted to make that choice. If anything, the disposition fairly implies the opposite. After the Court of Appeal determined the trial court had erred by rendering judgment against Deutsche Bank on the basis of the prior quiet title judgment, the court remanded the case for completion of trial, where the homeowner had attempted to show that Deutsche Bank's deed of trust was invalid based on fraud committed by other persons who were not parties to the lawsuit. (See *Deutsche Bank*, *supra*, 206 Cal.App.4th at pp. 205-208, 217-218.) That is precisely what LaChapelle accomplished against appellant at the trial in this case.

Appellant also contends the trial court "committed reversible error by ruling that the entity which [held] a deed of trust and note on the date plaintiff filed his complaint . . . is not a necessary party to plaintiff's causes of action to cancel the deed of trust and quiet title. . . ." According to appellant, the holder of the deed of trust and the trustee of the deed of trust at the time of the filing of the complaint are necessary parties to an action for cancellation of the instrument. We see no error.

A quiet title plaintiff is required to identify any adverse claims to the disputed property and demonstrate that they are wrongful. (Code Civ. Proc., § 761.020, subd. (c); *Lucas v. Sweet*, *supra*, 47 Cal.2d at p. 22.) The plaintiff must "name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought." (Code Civ. Proc., § 762.010.) The Fifth Amended Complaint

is the operative complaint in this action. "'It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading. [Citations.]'" (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884, quoting *Meyer v. State Board of Equalization* (1954) 42 Cal.2d 376, 384.) "The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment." (*State Compensation Ins. Fund v. Superior Court*, 184 Cal.App.4th 1124, 1131.)

The Fifth Amended Complaint maintained causes of action against First Financial for fraud, breach of fiduciary duty, and negligence, but added two new causes of action against Hansen McCoy, Yousif, and Doyle. These new claims were based on developments that occurred after LaChapelle filed the original complaint. The new cause of action for cancellation of instruments requested cancellation of all deeds on the property acquired after the deed of trust held by Wells Fargo on the ground that they are "void and subject to cancellation based on the fraud and misconduct" alleged against First Financial. The new quiet title cause of action sought a determination of title against the new adverse claims of Hansen McCoy, Yousif, and Doyle. The Fifth Amended Complaint, meanwhile, omitted prior counts for cancellation and quiet title against Wells Fargo.

LaChapelle filed these new claims after Hansen McCoy purchased the property at the trustee sale. That sale served to satisfy the mortgage, extinguish the Wells Fargo deed of trust, and terminate RSC as trustee. (Civ. Code, § 2910; *Alliance Mortgage Co. v. Rothwell*, *supra*, 10 Cal.4th at p. 1235.) As of the date of the operative complaint,

then, only appellant, Yousif, and Doyle remained as putative holders of any interest in the property adverse to LaChapelle. Hansen McCoy was the holder of the trustee's deed and Yousif and Doyle were holders of a new deed of trust. LaChapelle named all those interested parties as defendants with adverse claims in the Fifth Amended Complaint.

A quiet title claim must set out the date as of which the plaintiff seeks the determination and that date may be the date of the filing of the complaint or an earlier date. (Code Civ. Proc., § 761.020, subd. (d).) LaChapelle sought to quiet title against Hansen McCoy, Yousif, and Doyle as of the date of the filing of the Fifth Amended Complaint. Therefore, the date of determination for LaChapelle's new cancellation and quiet title claims against appellant sought a determination of title as of September 17, 2012. Thus, the trial court did not err in determining Wells Fargo and RSC were not necessary parties.

Finally, appellant contends the trial court erred "by ruling the entity that purchased the real property at trustee's sale . . . is responsible for fraud and breach of fiduciary duty committed by the lender which made the trust deed loan to plaintiff." This argument mischaracterizes the trial court's order. The trial court did not hold appellant responsible for the tort of another; it simply recognized that the law protects property owners from fraud even against bona fide purchasers for value. (See *Erickson*, *supra*, 130 Cal.App.2d at p. 557.) Far from holding appellant responsible, the trial court exercised its equitable powers to order LaChapelle to compensate Hansen McCoy in the amount of $596,273. Any shortfall on their investment does not reflect a punishment, but the risk of

purchasing a property subject to a lis pendens without first conducting adequate research into the strength of the pending claims.

III

DISPOSITION

We affirm the judgment. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

KING
J.

CODRINGTON
J.